UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HUMBERTO FEIJOO,)	
)	
Plaintiff,)	
)	**Civil Action No.**
v.)	**14-12833-IT**
)	
LUIS SPENCER, et al.,)	
)	
Defendants.)	

<u>ORDER</u>

TALWANI, D.J.

Plaintiff Humberto Feijoo, proceeding *pro se*, filed this civil rights action under 42

U.S.C. § 1983 against Commissioner Spencer and others. *See* Docket No. 1. Defendants have

not yet answered the complaint. On January 20, 2015, Plaintiff filed a motion to amend the

complaint. *See* Docket No. 22.

Defendants have now filed a Suggestion of Death notifying the court that Mr. Feijoo

died on February 23, 2015. *See* Docket No. 23. The certificate of service accompanying the

Suggestion of Death of Plaintiff Humberto Feijoo states that on March 2, 2015, a copy was

served on his next of kin listed as Maria Feijoo, 36 Red Cedar Road, Mashpee, MA 02649. *Id.*

Mr. Feijoo's death affects the viability of this lawsuit. Pursuant to Federal Rule of Civil

Procedure 25(a), "[i]f a party dies and the claim is not extinguished, the court may order

substitution of the proper party." If a motion for substitution of the party is not made within 90

days after service of a statement noting the death, "the action by ... the decedent must be

dismissed." Fed. R. Civ. P. 25(a)(1). This 90 day time period does not begin to run until the

decedent's representative or successor is properly served with the statement noting the death thereby identifying and notifying the substitutable party. *In re C.R. Stone Concrete Contractors, Inc.*, 462 B.R. 6, 18 (Bankr. D. Mass. 2011).

Accordingly, if a timely motion for substitution is not filed with the Court, this action may be dismissed pursuant to Rule 25 of the Federal Rules of Civil Procedure. The Clerk shall send a copy of this Order to Maria Feijoo, 36 Red Cedar Road, Mashpee, MA 02649.

Except as to the motion for substitution, the case is hereby stayed pending further order of the court.

So ordered.

 /s/ Indira Talwani
United States District Judge

Dated: March 17, 2015